No. 80-1125

In the Supreme Court of the United States

OCTOBER TERM, 1980

FRED W. BARTZ, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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1. The Coralville Dam, a flood control dam on the Iowa River, was built by the United States Army Corps of Engineers in 1958, and since that time the dam has been operated by the Corps. Petitioners filed this action in the Court of Claims, contending that the Corps' operation of the dam has resulted in the frequent flooding and saturation of their lands, located along the Iowa River, and claiming compensation under the Fifth Amendment for the alleged "taking" of the lands thus affected (Pet. App. 2-3). The government contended that the problems experienced by petitioners were the result of abnormally high precipitation over a period of several years, and were unrelated to the operation of the Coralville Dam. The Court of Claims agreed, holding that "the great majority of these conditions occurred in excessively wet years and would in all likelihood have happened without the existence of the upstream dam" (Pet. App. 28). In those instances where the operation of the dam,

rather than "meteorological events," may have caused sustained high stream levels which kept lower portions of the adjacent farms too damp to cultivate, the court held that any ensuing damages "were heavily countervailed by the benefits to the farmlands as a whole, whether to rescue them from the damaging effects of floods or to save them from the consequences of drought conditions" (*id.* at 28-29).

2. The sole ground advanced in support of the petition is the contention (Pet. 13) that the court below had no basis for finding that petitioners' farms "dried out within ten days after the water was regulated off the top of their fields." The Court of Claims' holding, however, was not based upon any supposed drying out period, but upon the finding that flooding was caused primarily by abnormally high precipitation, and that damage resulting from such flooding as may in fact have been caused by the operation of the dam was slight in comparison to the benefits conferred by the existence of the dam. Petitioners' contention, consequently, is irrelevant to the court's conclusion. At all events, petitioners' argument consists of nothing more than a challenge to the Court of Claims' findings of fact, and, accordingly, does not warrant this Court's review. See *General Talking Pictures Corp.* v. *Western Electric Co.*, 304 U.S. 175, 178 (1938).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

FEBRUARY 1981